

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

KEVIN SCOTT CALLAHAN,

Defendant and Appellant.

E048770

(Super.Ct.No. FSB703609)

OPINION

APPEAL from the Superior Court of San Bernardino County. David Cohn, Judge.

Affirmed.

Brian N. Gurwitz, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Defendant and appellant Kevin Scott Callahan was charged with possession of cocaine base (Health & Saf. Code, § 11350, subd. (a), count 1) in San Bernardino Superior Court case No. FSB70369 (the first case). It was also alleged that he had suffered four prior prison terms (Pen. Code, § 667.5, subd. (b)). Subsequently, he was

charged with possession of cocaine (Health & Saf. Code, § 11350, subd. (a)) in San Bernardino Superior Court case No. FSB704094 (the second case). It was alleged that he had suffered three prior prison terms (Pen. Code, § 667.5, subd. (b)). Pursuant to a plea agreement, defendant pled guilty to possession of cocaine in the second case and admitted one prior prison allegation. The remaining allegations were dismissed. Thereafter, pursuant to another plea agreement, defendant pled guilty to the charge of possession of cocaine base in the first case. The remaining allegations were dismissed, and defendant agreed to complete a Salvation Army residential drug treatment program (the Salvation Army program). A sentencing hearing was held on both cases on May 21, 2008. Defendant was granted three years' probation on both cases. As a condition of probation in each case, defendant was required to attend the Salvation Army program.

The trial court later found that defendant violated his probation after he was terminated from the Salvation Army program for stealing. The court sentenced defendant to the midterm of two years in state prison in the second case, plus one additional year on the prison prior. The court also sentenced him to a consecutive eight months in prison in the first case.

Defendant filed a notice of appeal immediately following the sentencing hearing. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On May 21, 2008, defendant was granted probation and ordered to attend the Salvation Army program. On June 19, his probation was revoked, after it was reported that he had absconded from the Salvation Army program on May 22. Defendant's

probation was reinstated in both cases on September 10. He was ordered to continue probation on the same terms and conditions, and he was released and transported to the Salvation Army program.

On October 17, 2008, a bench warrant was issued due to defendant's failure to appear for a probation review hearing. The court revoked his probation again.

On November 4, 2008, defendant was in custody and denied his failure to appear. There were several probation violation hearings set, but they were continued numerous times. Probation remained revoked.

On January 7, 2009, the court reinstated defendant's probation, released him for transport to the Salvation Army program, and warned him that this was his last chance to comply with the program.

On May 21, 2009, the court issued a bench warrant and had ordered probation revoked, when it was informed that defendant was terminated from the Salvation Army program on May 14, 2009.

On July 6, 2009, the probation department filed a petition to revoke probation, alleging that defendant violated the condition requiring him to attend the Salvation Army program. The petition specifically alleged that on May 15, 2009, defendant was caught stealing for the second time and was terminated from the Salvation Army program. A contested probation violation hearing was held, and the prosecution called two witnesses. The first was Major John Randall, the administrator at the Salvation Army program center where defendant resided. Major Randall testified that defendant had been enrolled in the program three times in the last two or three years. He confirmed that defendant

was terminated from the program on May 15 for stealing an item from the warehouse and putting it in his pocket. Major Randall further testified the regulations stated that residents were not allowed to take anything.

The next witness who testified was Ricardo Sanchez, an employee of the Salvation Army program, who supervised some of the work crews there. He testified that he had observed defendant violate the Salvation Army rules on more than one occasion. He further stated that on some occasions when defendant violated the rules, he “gave him a pass.” However, on May 15, 2009, Sanchez finally filed a violation of rules complaint against defendant. Sanchez stated he had observed defendant grab a Chapstick off the conveyor belt, while sorting clothes in the warehouse, and stick it in his pocket.

Defendant testified and denied taking the Chapstick. He also admitted he did not return to court after being terminated from the Salvation Army program, even though he knew he was supposed to do so. Instead, he waited until he was arrested on a warrant.

The prosecution argued that it had given defendant “every single break” it could. The prosecution reiterated this was the third time defendant had been terminated from the Salvation Army. The court then found that defendant was in violation of his probation and revoked it. The court sentenced defendant to a combined total of three years eight months on both cases.

DISCUSSION

Defendant appealed, and upon his request, this court appointed counsel to represent him. Counsel has filed a brief under the authority of *People v. Wende* (1979) 25 Cal.3d 436 and *Anders v. California* (1967) 386 U.S. 738 [87 S.Ct. 1396, 18 L.Ed.2d

493], setting forth a statement of the case and no arguable issues. Counsel has also requested this court to undertake a review of the entire record.

We offered defendant an opportunity to file a personal supplemental brief, which he has not done.

We have now concluded our independent review of the record and find no arguable issues.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

HOLLENHORST

Acting P. J.

We concur:

RICHLI

J.

KING

J.